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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/060,083

01/31/2002

Kimio Nozaki

034822-0101

7148

22428

7590

04/19/2004

FOLEY AND LARDNER  
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3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

FLANIGAN, ALLEN J

ART UNIT

PAPER NUMBER

3753

DATE MAILED: 04/19/2004

*12*

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/060,083

Applicant(s)

NOZAKI ET AL.

Examiner

Allen J. Flanigan

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 7-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

Claims 7-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Tategami et al.

The amendment made to claim 1 resolves the 112 second paragraph issue, but does nothing to distinguish the claims over the prior art structure shown in Tategami et al. See the comments made in regard to the above rejection in the previous Office action.

Applicant's arguments filed 2/17/04 have been fully considered but they are not persuasive.

Applicant asserts that "Tategami et al. does not disclose a straightening member for keeping a first corrugated strip in a straight shape in a longitudinal direction." When one consults the specification, the structure that is described using the claim terminology is identical to that shown in Tategami et al:

a louvered fin according to . . . the present invention . .  
. has a first corrugated strip 23 and a second corrugated

strip 33. The second corrugated strip 33 is capable of serving as the straightening member for keeping the first corrugated strip 23 in a straight shape in the longitudinal direction of the first corrugated strip 23 (emphasis added).

Just as in the disclosed invention, Tategami et al. shows adjacent corrugated strips joined together in a manner such that they are capable of keeping each other from curling due to twisting force resulting from the asymmetrical formation of fins 4. The fact that Tategami et al. did not appreciate this aspect of dual corrugated fin formations is immaterial; in claims drawn to a product or structure, more than a mere recognition of an unappreciated property of a known prior art structure or compound is required for novelty<sup>1</sup>.

In examining claims for novelty, it is not necessary that the prior art teach what the applicant teaches. It is only necessary that the claims "read on" something disclosed in the reference. The thermal connection members of Tategami et al. formed by notches 2 clearly read on the claimed bridge members; it is immaterial that Tategami et al. does not contain any "disclosure, teaching or suggestion that these portions are or can be<sup>2</sup>" severed to divide the side by side portions of corrugated fin 1.

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<sup>1</sup> In re Schoenwald, 22 U.S.P.Q. 2d 1671.

<sup>2</sup> Applicant's response, p. 13: "There is no disclosure, teaching, or suggestion that these portions are or can be used as detachment points."

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (703) 308-1015. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (703) 308-1272. The

fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Allen J. Flanigan  
Primary Examiner  
Art Unit 3753

AJF